FEDERAL CRIMINAL PROCEDURE: THE BASICS

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WHAT IS CRIMINAL PROCEDURE AND WHAT ARE THE SOURCES OF PROCEDURAL LAW

- The origins of criminal procedure
- Stages in a Criminal Prosecution
  - Overview
  - Investigation
  - Adjudication
- Contemporary Sources of Procedural Law
  - Federal and State Courts
  - Centrality of U.S. Supreme Court Decisions
INCORPORATION OF BILL OF RIGHTS

• What is Incorporation Doctrine?
  • Is There a Debate? You bet!
  • Full Incorporation v. Selection Incorporation
  • Original Intent?
  • The Cryptic Meaning of “Due Process”

• The Current State of Incorporation Doctrine
FOURTH AMENDMENT: THE CORNERSTONE OF FEDERAL CRIMINAL PROCEDURE

• What is it and what does it protect?

• Initial Issues:
  • Standing to Raise Fourth Amendment Claims
  • Exclusionary Rule
  • “Persons”
  • “Houses”
  • “Papers and Effects”
THE LAW OF THE “SEARCH”

• What is the meaning of “search”?
• Katz v. United States
  • The law before
  • The law now
• Surveillance, “false friends”, open fields, sniffing dogs (of all kinds), and modern methods of gathering evidence
  • Electronic tracking devices, pen registers, and the temperature of a gentlelady’s bath
WHAT IS A SEIZURE?

- Why is the term significant?
- General rule
- Seizure of Property
- Seizure of Persons
  - *Terry v Ohio*
  - *Mendenhall* and the “Reasonable Person” Test
PROBABLE CAUSE

• The origins of probable cause in the Constitution
• General principles and definitions
• Objectivity?
• Searches and arrests
• Warrants
• How to determine probable cause
  • Tests and reasonableness
YOU’RE UNDER ARREST, I THINK

• What is an arrest?
• Is it different than a seizure?
• Arrest warrants
• Arrests at third-party homes
• Executing an arrest and when entry to home is permitted
• Use of force in making an arrest
DON’T YOU NEED A WARRANT?

• Search warrants and Constitutional principles

• How the government obtains a warrant
  • Application process
  • Warrant requirements
  • Execution of warrant
    • Knock-and-announce rule
    • Exceptions to the rule

• Search of premises open to the public; homes and cars

• Detention of suspects during searches
NO WARRANT; NO PROBLEM: EXIGENT CIRCUMSTANCES AND SEARCH INCIDENT TO ARREST

• Exigent circumstances
  • Inside and outside the human body
  • Entry and search of private homes

• Search incident to arrest
  • General principles and rules
  • Chimel v. California
  • United States v. Robinson
  • New York v. Belton
  • Thornton v. United States
“PLAIN VIEW” SEARCHES

• What is a plain view search?

• The elements:
  • Lawful vantage point
  • Right of access
    • Right to Seize is “Immediately Apparent”

• The seminal case: Arizona v. Hicks

• Other considerations
SEARCH OF VEHICLES AND THEIR CONTENTS

• Exceptions to the search warrant rule
• Carroll v. United States
• Chambers v. Maroney
• Coolidge v. New Hampshire
CONSENT SEARCHES

• General principles
• Voluntary consent
• Breadth of search
• Third-party consent
• “Apparent authority”
TERRY V. OHIO

• Terry v. Ohio and the birth of the Terry stop
• What is reasonable suspicion?
• Terry stop v. arrest: a major distinction
• “Less intrusive means”
• When is Terry stop appropriate?
• Other issues
STANDING AND THE FOURTH AMENDMENT

• Why is standing important?
• *Rakas v. Illinois: Before and After*
  • Automatic standing
  • Search of another’s residence with and without owner
  • Search of automobile when owner is absent
  • Search of another’s automobile
EXCLUSIONARY RULE

• Overview
• The historical evolution of the rule
• Weeks v. United States
• The States
  • Wolf v. Colorado
  • Rochin v. California
  • Mapp v. Ohio
INTERROGATION

- What are the Constitutional issues implicated?
- Common law antecedents
- Due Process Clause: Voluntariness Requirement
- Remedies for violations of the right
TAKING THE FIFTH: PROTECTIONS AGAINST SELF-INCRIMINATION

• What is the Fifth Amendment?
  • The elements
  • The rationale
  • How it affects interrogation
  • Remedies for violations

• *Miranda v. Arizona* and the law of interrogation
  • What is *Miranda*?
  • How *Miranda* changed our culture
I NEED A LAWYER!:
THE SIXTH AMENDMENT

• The Constitutional right to legal counsel
• *Massiah v. United States* and its progeny
• Waiver of right to counsel
  • When is a waiver valid?
• Scope of exclusionary rule
• Fruit of poisonous tree doctrine
• Sixth Amendment and *Miranda*
• Entrapment: What is it and will it ever be relevant?
CONCLUSION

• Can we have substantive justice without procedural justice?
  • Is process always due?
  • John Adams and the Boston Massacre
  • Why every lawyer needs to be familiar with criminal procedure
  • Can we divorce rights from duties?
  • Getting the bad guys must be done in procedurally proper manner
  • Other closing thoughts

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